IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20450 of 2004

Between:

Abdul Aleem Khan S/o Late Abdul Jaleel Khan
H. No. 1-87/12, Hussaini Shahwali Darga, Hyderabad (SC.No. S.9033718)

..... PETITIONER

AND

1 Transmission Corporation of A.P., Limited (APRANSCO) Rep by Chief Managing Director, Vidyut Soudha, Khairatabad, Hyderabad
2 The Assistant Divisional Engineer/Provisional Assessing Officer, (Electrical) Operation, Distribution IV, City-VII APCPDCL, (A.P. Transco) REtibouli, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more particularly one in the nature of writ of Mandamus declaring the provisional assessment notice in letter ADE/O/D-IV/C-VII/RTB/D.No. 9784, dated 3-11-2004 of the 2nd respondents as highly illegal, arbitrary, unjust and contrary to section 126 of the Electricity Act, 2003 and consequently set a side the same.

Counsel for the Petitioner : MR. D.V.NAGARJUNA BABU

Counsel for the Respondents : MR.KANAKAMEDALA RAVINDRA KUMAR

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.20450 OF 2004

ORAL ORDER:

Petitioner seeks a writ of Mandamus declaring the impugned Provisional Assessment Notice No.ADE/O/D-IV/C-VII/RTB/D.No.9784, dated 03-11-2004 issued by the second respondent as arbitrary and illegal and contrary to Section 126 of the Electricity Act, 2003 (for short 'the Act') and consequently set aside the same.

Petitioner states that he is running an offset printing press at H.No.1-87/12, Hussani Shawali, Darga, Hyderabad. The said house is having a L.T. Cat-III Service Connection bearing No.9033718 obtained from the erstwhile A.P.S.E.B. He states that he has been paying the consumption charges in respect of the said service connection regularly. While so, the petitioner was served with the impugned notice dated 03-11-2004 stating that the premises in occupation of the petitioner was inspected on 18-10-2004 by ADE/DPE-II/Hyd(C) (Designation) and from the said inspection it was found that the meter box seal was tampered and opened and it was also noticed that the meter terminal cover seal and also meter board seals are in tampered condition and that a study of his past record of consumption discloses that the consumption being recorded by the meter is unduly low, which *prima-facie* indicates that the petitioner is guilty of pilferage of energy and accordingly he was informed that an inquiry will be made into the matter by the Superintendent Engineer, who will fix the amount of loss sustained by the company. Further, he

was informed that the value of the energy pilfered by the petitioner has been provisionally estimated at Rs.5,69,056-80 ps and he was required to pay Rs.2,84,528-40 ps being half of the estimated amount pending enquiry.

The learned counsel for the petitioner contends that the assessment made under the impugned notice purportedly in exercise of power under Condition No.39 of Terms and conditions of supply is untenable in view of the provisions of the Electricity Act, 2003 which come into force with effect from 10-12-2003. He contends that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 and that the impugned action of demanding 50% of provisionally estimated amount for restoration of power supply is not contemplated under the said Act. It is also to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Electricity Act, 2003 held that under the Act there is no power, while issuing provisional assessment to forthwith step or disconnect power supply or call upon to pay even part of the provisional assessment amount till final assessment is made.

In the circumstances, and following the ratio laid down by the Division Bench in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned Provisional Assessment Notice dated 03-11-2004 is set aside and it is left open to the Assessing Authority to make a final assessment in accordance with law after affording opportunity to the petitioner to submit his explanation. Till such time, there shall be a direction to the respondents not to disconnect the power supply to the service connection bearing No. S 9033718, situated at H.No.1-87/12, Hussain Shawali Darga, Hyderabad.

Accordingly, the writ petition is disposed of. No costs.

05th November, 2004.

Note:- Issue operative portion

By wire at party's costs.

(B/O)

gbs

To

1 The Chief Managing Director, Transmission Corporation of A.P., Limited (APRANSCO), Vidyut Soudha, Khairatabad, Hyderabad
2 The Assistant Divisional Engineer/Provisional Assessing Officer, (Electrical) Operation, Distribution IV, City-VII APCPDCL, (A.P. Transco) REtibouli, Hyderabad

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